17

DIVISION BENCH: **HON'BLE SHRI V.K. SHRIVASTAVA & HON'BLE SHRI DHIRENDRA MISHRA, JJ**

CRIMINAL APPEAL NO. 181/2001

Appellant	**Shibu Deo Nath, aged 32 years, son of Mohan Vasi Deo Nath, Occupation – Agriculture, R/o Village P. V.36, P.S. Pankhajur, Distt. Kanker.**
	Vs.
Respondent	**State of Chhattisgarh through Police Station Pankhajur, Distt. Kanker, CG**

Shri Ram Krishna Sharma learned counsel for the appellant.
Shri M.P.S. Bhatia learned P.L. for the respondent/State.

JUDGMENT
(25.03.2006)

Per Dhirendra Mishra, J

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the impugned judgment dated 21.12.2000 passed by the learned Additional Sessions Judge, Kanker in S.T.No. 171/99 whereby the appellant has been convicted under Section 302 of the IPC and sentenced to undergo imprisonment for life.

2. Case of the prosecution is that deceased Kajol was the wife of the appellant. The appellant was suspecting her fidelity. On 04.01.1999 at about 8.00 p.m. the appellant took the deceased outside his house and strangulated her with the help of towel (gamchha) and after killing the deceased he set the dead body on fire with the help of paddy fodder for two hours. P.W.-2 Shanti Rai lodged the First Information Report of Ex.P-1 on 05.01.98 mentioning therein that on that day at about 8.30 a.m. when he was in his house, Mano Deonath P.W.-11, the brother of the appellant

16

came to him and informed that his brother Shibu Deonath had killed his wife. The news was spread in the whole village instantaneously. The complainant along with other villagers went to Shibu Deonath and asked him why he had killed his wife, whereupon he informed that he suspected the character of his wife and therefore killed her by throttling with towel on 04.01.99 at 8.00 p.m. and set her dead body on fire with the help of paddy fodder at about 10.00 p.m. Since Shibu confessed the crime he had come to lodge the report. The police proceeded for investigation and during investigation inquest was performed on the dead body vide Ex.P-4 after notice to the witnesses. Thereafter body of the deceased was sent for post mortem examination to Civil Hospital, Pankhajur vide Ex.P-5. Post mortem was conducted by Dr. M.S. Kanwar P.W.-10 who submitted the post mortem report P-5B. During post mortem examination the doctor observed that body was completely burnt. Blackish colour due to burn present, skeleton below both femur burnt, skeleton below shoulder joint burnt, neck completely extended position, burnt cloth along with knot in front placed in neck, both pieces of lungs present found congested, all the ribs intact and skin and muscles burnt, no other bony injury seen, external genital was completely burnt and the cause of death was strangulation and the dead was homicidal in nature. Spot map P-6 was prepared by the Investigating Officer on 06.1.99. After completing the investigation charge sheet was field in the Court of Judicial Magistrate First Class, Bhanupratappur who in turn committed the case to the Sessions Judge, Bastar from where the learned Additional Sessions Judge, Kanker received the case on transfer for trial.

3. Learned Additional Sessions Judge framed charge under Section 302 of the IPC. The appellant abjured his guilt.

4. The prosecution in order to establish its case has examined thirteen witnesses. Statement of the accused was also recorded under Section 313 of the Cr.P.C. The appellant admitted that deceased was his wife. However, in answer to majority of the questions put to him he replied that "he does not know" or that the questions put to him were false. In reply to

19

question No. 9 that in his house there are two rooms and in one of them he resided along with his wife, the answer was that it is incorrect rather all the members of the family reside together. However, he pleaded his innocence and false implication in crime in question.

5. After hearing learned counsel for the parties, the trial Court has convicted and sentenced the accused/appellant as mentioned above.

6. Homicidal death of Kajol is not is dispute. Even otherwise from the statement of Dr. Kanwar it is established that cause of death of the deceased was strangulation and the death was homicidal in nature.

7. Learned trial Court has held the appellant guilty by recording a finding inter alia that on the date of incident the appellant and the deceased were residing together in their house and body of the deceased was found in the thrashing field and that the appellant made extra judicial confession which is duly corroborated by the postmortem report and no explanation has come forward from the defence against the circumstances appearing against him.

8. Learned counsel for the appellant submits that there is no eyewitness to the incident and the case of the prosecution hinges on the circumstantial evidence. However, prosecution has not been able to establish all the circumstances individually and the chain of the circumstances is not complete and the Court below has committed illegality by convicting the appellant on the basis of the above circumstances.

9. On the other hand, learned counsel for the State supports the impugned judgment of the trial Court.

10. We have heard learned counsel for the respective parties.

11. It is not in dispute that the appellant and the deceased lived together in their house on the date of incident and the dead body of the deceased was found in the thrashing field of the appellant. PW-2 Shanti

Rai lodged the first information report on 5.1.99 mentioning the facts as described in the foregoing paragraphs. In his deposition he has stated that on 5.1.99 the brother of the appellant Mano Deonath came to him and informed that wife of his younger brother Shibu Deonath was not traceable, whereupon he went to the house of Shibu Deonath and found that ash was spread in his house as also on the road. He also found small parts of the dead body in the ash. Thereafter he went to lodge the report along with villagers to the Police Station. He has further stated that before going to the police station he did not make any inquiry form the accused. Though he has admitted that he lodged the report Ex. P-1, he has denied that he had given the information of " B to B" part of Ex. P-1 which refers to extra judicial confession made by the accused. However, in paragraph 4 of his deposition he has stated that on the following day on inquiry Shibu had told that since his wife did not act according to him, due to anger he killed her and set her on fire. This was stated by the accused next day of lodging of FIR. In the cross examination though this witness has stated that in the diary statement of Ex. D-1 he did not reveal the factum of extra judicial confession made by the appellant, however, from the perusal of Ex. D-1 we find that the above fact is mentioned in the diary statement.

12. PW-4 Kalipad Das has deposed in his evidence that he recognized the accused, his mother and his wife. Mother and sister of the accused had come to his house, they used to sleep in his verandah and they asked him to go to the house of Shibu and see what was happening, whereupon he sent his son Shankar to the house of the accused. He further stated that he sent his son to the house of elder brother of the accused. In the morning Kajol was lying by the side of the house and the accused was in his house. On inquiry from Shibu he confessed that he himself killed his wife. In the cross examination this witness has stated that he does not remember whether he disclosed this fact in the diary statement Ex. D-2 or not. PW-8 Nityanand has stated in his evidence that accused had killed his wife. Brother of the accused told him that wife of the accused had been burnt. Thereafter, Police came to the village and apprehended the accused on the spot. Station House Officer asked him to see as to what

Shibu was speaking, on which they inquired from the appellant as to what happened to his wife, whereupon he confessed his guilt. In the cross examination he has stated that while he was sitting in the police station, a boy from the village came there and said that accused was wandering in the village carrying axe. However, this statement was allegedly given by the accused in presence of the police and as such the same is not admissible.

13. The statement of PW-2 who lodged the FIR (Ex. P-1) shows that he came to lodge the report as the accused had confessed his guilt. In the deposition before the Court also this witness has stated about the extra judicial confession made by the accused. Thus, the statement of this witness is duly corroborated by the promptly lodged FIR (Ex.P-1).

14. PW-1 Kumodini has also stated in her statement that Kajol was the wife of the appellant and she learnt that Kajol was dead. Minu is the sister of the appellant. However, she did not inform that the appellant had killed his wife. On the other hand Minu informed that wife of the appellant was not traceable whereupon she went to the house of the appellant and saw that ash was lying in his house as also on the way and pieces of bone were also present in the ash. Bones were of face and other parts of the body and ash was of burnt paddy fodder. There is no explanation from the appellant regarding the presence of ash of paddy fodder mixed with human bones in his house and on the way.

15. After close scrutiny of the material available on record the incriminating circumstances appearing against the appellant may be summarized as under:

(i) deceased was the wife of the appellant and they were living together at the time of incident in the same house;

(ii) PW-4 Kalipad Das has stated in his evidence that sister and mother of the appellant had come to his house on the date of incident in the nigh hours and requested him to go the house of Shibu and see what had happened and on the next day dead

02

body of Kajol was found and on post mortem the doctor opined that cause of death was strangulation;

(iii) conduct of the appellant in not informing about the death of his wife either to the villagers or to the police after the incident.

16. In view of the aforesaid circumstances, we are of the considered opinion that the circumstances relied upon by the prosecution as mentioned above lead to the involvement of the appellant in the crime in question and the prosecution has been able to establish the involvement of the accused with the help of circumstantial evidence adduced by the prosecution.

17. In the result, there is no illegality or infirmity in the impugned judgment of the trial Court convicting and sentencing the accused as mentioned above and accordingly the appeal being devoid of merit the same is liable to be dismissed. It is hereby dismissed.

Sd/-
V.K. Shrivatava
Judge

Sd/-
DHIRENDRA MISHRA
Judge